IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
APPEAL FROM ORDER NO.574 OF 2007
IN
NOTICE OF MOTION NO.1927 OF 2007
IN
SHORT CAUSE SUIT NO.3340 OF 2004

1. M/s.Deepti Air Systems
   & Fabricators Pvt. Ltd.
2. Raghunath Rampalat Dube .. Appellants/
   Orig. Plaintiffs

Versus

1. Smt. Shanta, wd/o P.V. Venkatesh,
2. The State of Maharashtra .. Respondents/
   Orig. Defendants

And

Court Receiver, High Court, Bombay..Opponent

Mr.M.P. Vashi Advocate for the Appellants
Mr. Mohan Kumar Advocate for Respondent No.1

CORAM : S.R. SATHE,J.
DATED : 14/08/2007

ORAL ORDER :-

1. The Appellants-original Plaintiffs in Short Cause Suit No. 3340 of 2004 have preferred this appeal against the order passed by the City Civil Court Greater Bombay in Notice of Motion No.1927 of 2007 in SC Suit No.3340 of 2004 whereby the Application filed by the Plaintiffs for modifying the order passed by the City Civil Court on 15/07/2004 whereby the Plaintiffs were appointed as agents of the Receiver on usual terms

and prayed that Plaintiffs be allowed to occupy the suit property without paying any royalty was rejected. For the sake convenience hereafter the parties shall be referred to as 'Plaintiffs' and 'defendants'.

2. The brief facts giving rise to this appeal from order are as under :-

The dispute between the parties is in respect of gala No.46 situated in Nandanvan Industrial Estate, Mulund. According to Plaintiffs, the said gala is in their possession as tenant while the contention of the defendant No.1 is that she is the owner of the said gala and Plaintiffs have made an encroachment and occupied the same. According to Plaintiffs, the defendant No.1 was not at all concerned with the suit gala, however, she tried to obstruct Plaintiffs' possession of the said gala. Hence, Plaintiffs filed S.C. Suit No.3340 of 2004 for permanent injunction against the defendant No.1. During the pendency of the suit, Plaintiffs applied for appointment of the Court Receiver, High Court Bombay. Accordingly, the learned City Civil Judge, Bombay vide his order dated 15/07/2004 appointed Court Receiver, High Court Bombay

as Receiver and directed him to take formal possession of the suit property and appoint Plaintiff as his agent "on usual terms". Accordingly, the Receiver took the formal possession and appointed Plaintiffs as his agents. However, subsequently, Plaintiffs withdrew the said suit and the Receiver was discharged. Defendant No.1 filed Notice of Motion for setting aside the said withdrawal order and discharge of receiver. The said Notice of Motion was rejected. Hence, the defendant No.1 filed Civil Revision Application in the High Court. In the said Civil Revision Application compromise was arrived at and Receiver was continued as per the previous order. The Receiver after hearing both the parties fixed Ad-hoc royalty of Rs.8000/- per month and called upon the Plaintiff to pay the same. Hence, Plaintiffs filed Notice of Motion No.1927 of 2007 and submitted that the original suit was not for possession. He was already in possession of the property and as such in the instant case, usual terms do not contemplate Plaintiffs to pay royalty. They, therefore, prayed that the Receiver be directed not to recover royalty.

3. The defendant No.1 filed her say and opposed the application and contended that the royalty should be much more than Rs.8000/-. Besides this, she also contended that the order regarding appointment of Receiver is confirmed in Civil Revision Application and as such, Notice of Motion be rejected.

4. The learned Judge, City Civil Court Bombay after hearing arguments of both the learned Advocates and perusing the material on record came to the conclusion that the term "usual terms" can not be construed as contemplated by the Plaintiffs and as both the parties are laying a claim over the suit property, royalty has to be recovered as directed earlier. He, therefore, rejected the Notice of Motion.

5. Being aggrieved by the same, Plaintiffs have filed the present appeal. In this appeal before me, Shri M.P. Vashi learned Senior Advocate for the Plaintiffs submitted that the Court ought to have taken into consideration the fact that Plaintiffs are tenants in the suit premises and as such usual terms do not include payment of royalty by Plaintiff in the instant

case. He submitted that Plaintiffs can be directed only to pay regular outgoings such as maintenance charges, electricity, other taxes etc. As against this, learned Advocate for the defendant No.1 supported the order passed by the learned City Civil Judge.

6. At the outset it must be mentioned that in the instant case, Receiver has been appointed at the instance of Plaintiffs only. Admittedly, Plaintiffs are put in possession of the said suit property as agents of the Court Receiver, High Court Bombay. It is worth to note that in the order dated 15/07/2004 passed in Notice of Motion No.2742 of 2004 the learned City Civil Judge had specifically directed the Court Receiver to appoint Plaintiffs as Receiver's Agents on usual terms. What is more to be noted is that the said order has been confirmed in Civil Revision Application No.17 of 2006 by this Court (CORAM:A.M.KHANWILKAR,J.) on 02/03/2007. The said order in Civil Revision Application is passed on the basis of the consent terms arrived between Plaintiffs and defendants. In the same order, it is mentioned "The Court Receiver, High Court, Bombay will remain in possession of the suit premises

Gala No.46 situated in Nandanvan Industrial Estate, Mulund and deemed to have put Plaintiff in possession thereof as agent of the Court Receiver on the terms and conditions spelt in the order dated 15/07/2004". So, Plaintiffs have in fact clearly admitted that he be appointed as agent on the same terms and conditions which are embodied in the order dated 15/07/2004. So, now he is in fact estopped from contending that royalty should not be recovered from him.

7. We can not ignore the fact that here both the parties are laying claim for possession of the suit property. Though, Plaintiffs alleged that they have taken the suit property at monthly rent of Rs.5000/- per month, from the perusal of the record and in particular Court Receiver's Report, it seems that the Plaintiffs did not adduce any material to substantiate that the royalty can be fixed at Rs.5000/-. From the Court Receiver's Report, it is also very clear that learned Advocate for the Plaintiffs had also submitted that the Ad-hoc royalty be fixed at Rs.5000/- per month. The Court Receiver, however, after taking into consideration the area and nature of the property and

other relevant factors has fixed Ad-hoc royalty at the rate of Rs.8000/- per month. From the Receiver's Report and other material, it does appear that the gala in question is 1270 sq.ft. Besides that there is 300 sq.ft. open space. It is situated in Industrial Zone and as such, used for commercial purposes. So, having regard to these factors, it can not be said that the Ad-hoc royalty fixed by the Receiver is improper. Incidently, it must be noted that the Receiver had in fact made an attempt to get property valued from the approved valuer. However, approved valuer could not enter the suit premises and as such valuation report could not be submitted.

8. In view of above discussion, I am of the view that the order passed by the Judge, City Civil Court, Mumbai rejecting Notice of Motion No.1927 of 2007 is legal and correct. There is no necessity to interfere with the same. Hence, I pass the following order :-

O R D E R

Appeal from order No.574 of 2007 stands dismissed.

Under the circumstances of the case, Parties to bear their own costs.

(S.R. SATHE,J.)